IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 202

LANDIS MACHINE COMPANY,
Petitioner,

vs.

CHASO TOOL COMPANY, INC.,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinions of the Courts Below.

The opinion of the Sixth Circuit Court of Appeals is reported at 141 Fed. (2d) 800 (61 USPQ 164) and appears at pages 4251-59 of the record. No opinion was written by the District Court but its Findings of Fact and Conclusions of Law appear at pages 4148 to 4204 of the record and are reported at 53 USPQ 200.

II.

Jurisdiction.

(1) The jurisdiction of this Honorable Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 28 U. S. Code, Section 347.

(2) The date of the opinion below is April 4, 1944 (R. 4250) and the mandate was stayed on June 1 by order of the Sixth Circuit Court of Appeals, pending disposition of this petition (R. 4260).

(3) This petition involves a combination of two equity suits arising under the patent laws of the United States. The opinion of the Circuit Court of Appeals for the Sixth Circuit requires that the Bills of Complaint be dismissed and that petitioner be enjoined from applying its patent and license notices to its products in view of the ruling that such notices constitute a violation of the Clayton Act of October 15, 1914, c. 323, Sec. 3, 38 Stat. 731, because of the limited scope of petitioner's patent rights (R. 4251). These rulings, it is submitted, are contrary to the decision of this Honorable Court in *Wilson* v. *Simpson*, 9 How. 109, 13 L. Ed. 66; *Strauss et al.* v. *Victor Talking Machine Co.*, 243 U. S. 490, 61 L. Ed. 866, 37 S. Ct. 412; *Ethyl Gasoline Corp.* v. *United States*, 309 U. S. 436, 84 L. Ed. 852, 60 S. Ct. 631; *United Shoe Machinery Corp.* v. *United States*, 258 U. S. 451, 66 L. Ed. 708, 42 S. Ct. 363; *Leeds & Catlin Co.* v. *Victor Talking Machine Co.* (No. 2), 213 U. S. 325, 53 L. Ed. 816, 29 S. Ct. 503, as modified by *Mercoid Corp.* v. *Mid-Continent Investment Co.*, 320 U. S. 661, 88 L. Ed. 262, 64 S. Ct. 268; and the cases of *General Electric* v. *Continental Lamp Works*, 280 Fed. 646 (C. C. A. 2); *The Skee Ball Co.* v. *Cohen*, 286 Fed. 275 (D. C. E. D. N. Y.); *Radio Corporation of America et al.* v. *Andreas*, 15 F. S. 685 (D. C. E. D. N. Y.);

and *Pick Manufacturing Co.* v. *General Motors Corp. et al.*, 80 Fed. (2d) 641 (C. C. A. 7).

It is also submitted, that the present petition raises a question of contributory infringement under the *Leeds & Catlin case* (No. 2), 213 U. S. 325, 53 L. Ed. 816, 29 S. Ct. 503, which is an important question of presently unsettled Federal law that should be settled by this Honorable Court under its supervisory authority.

It, accordingly, is submitted that this petition should be granted under the rulings of this Honorable Court in *Meccano, Limited* v. *John Wanamaker*, 253 U. S. 136, 140, 64 L. Ed. 822, 40 S. Ct. 463, and the cases therein cited, *Hamilton Shoe Co.* v. *Wolf Brothers*, 240 U. S. 251, 60 L. Ed. 629, 36 S. Ct. 269, and the cases therein cited.

III.

Statement of the Case.

A full statement of the case has been given under heading "A" in the petition and in the interest of brevity the statement will not be repeated at this point.

IV.

Summary of Argument.

POINT I: The nature of the thread cutting chasers here involved and their relative life and relation to the threads in which they are used, the cost of the chasers as compared to the reasonableness of the price paid for the heads useful in other relations in light of the life of the chasers and the lack of implied right to use chasers in the heads sold for other purposes resulting from the manner of sale all negative the right to replace chasers as expendable elements without license from petitioner held to

exist by the Court of Appeals. *Wilson* v. *Simpson*, 9 How 109, 13 L. Ed. 66; *Leeds & Catlin Co.* v. *Victor Talking Ma chine Co.* (No. 2), 213 U. S. 325, 53 L. Ed. 816, 29 S. C 503; *Strauss et al.* v. *Victor Talking Machine Co.*, 243 U. S 490, 61 L. Ed. 866, 37 S. Ct. 412; *Ethyl Gasoline Corp.* v *United States*, 309 U. S. 436, 84 L. Ed. 852, 60 S. Ct. 631 *United Shoe Machinery Corp.* v. *United States*, 258 U. S 451, 66 L. Ed. 708, 42 S. Ct. 363; *General Electric* v. *Con tinental Lamp Works*, 280 Fed. 846 (C. C. A. 2); *The Skee Ball Co.* v. *Cohen*, 286 Fed. 275 (D. C. E. D. N. Y.); and *Radio Corporation of America et al.* v. *Andreas*, 15 Fed. S 685 (D. C. E. D. N. Y.).

Point II: Petitioner's patent and license notices merel carry into effect a patentee's exclusive rights under dul issued patents and do not extend the exclusive patent rights They are therefore proper and do not provide a basis fo holding petitioner guilty of a misuse of its patents. *Leed & Catlin Co.* v. *Victor Talking Machine Co. (No. 2)*, 21 U. S. 325, 53 L. Ed. 816, 29 S. Ct. 503; *Strauss et al.* v. *Victo Talking Machine Co.*, 243 U. S. 490, 61 L. Ed. 866, 37 S. C 412; *United Shoe Machinery Corp.* v. *United States*, 25 U. S. 451, 66 L. Ed. 708, 42 S. Ct. 363; *General Electric* v *Continental Lamp Works*, 280 Fed. 846 (C. C. A. 2); *Th Skee Ball Co.* v. *Cohen*, 286 Fed. 275 (D. C. E. D. N. Y.); and *Radio Corp. of America et al.* v. *Andreas*, 15 Fed. S. 68 (D. C. E. D. N. Y.).

Point III: Petitioner's patent and license notices merel carry into effect the exclusive rights granted in duly issue patents and in themselves do not contain conditions, agree ments or understandings tending to create an unlawfu monopoly. They are therefore proper and do not provid a basis for holding petitioner guilty of a violation of th Clayton Act. *Leeds & Catlin Co.* v. *Victor Talking Machin*

Co. (No. 2), 213 U. S. 325, 53 L. Ed. 816, 29 S. Ct. 503; *Strauss et al.* v. *Victor Talking Machine Co.*, 243 U. S. 490, 61 L. Ed. 866, 37 S. Ct. 412; *United Shoe Machinery Corp.* v. *United States*, 258 U. S. 451, 66 L. Ed. 708, 42 S. Ct. 363; *General Electric* v. *Continental Lamp Works*, 280 Fed. 846 (C. C. A. 2); *The Skee Ball Co.* v. *Cohen*, 286 Fed. 275, (D. C. E. D. N. Y.); *Radio Corp. of America et al.* v. *Andreas*, 15 Fed. S. 685 (D. C. E. D. N. Y.); *Pick Manufacturing Co.* v. *General Motors Corp. et al.*, 80 Fed. (2d) 641 (C. C. A. 7).

POINT IV: The doctrine of contributory infringement announced by this Honorable Court in *Leeds & Catlin Co.* v. *Victor Talking Machine Co. (No. 2)*, 213 U. S. 325, 53 L. Ed. 816, 29 S. Ct. 503, and modified by this Honorable Court's decision in *Mercoid Corp.* v. *Mid-Continent Investment Co.*, 320 U. S. 661, 88 L. Ed. 262, 64 S. Ct. 268, does not deprive petitioner of the right to prevent respondent stocking and supplying thread cutting chasers specifically designed for and whose sole use is in assembling petitioner's patented combinations, with the intent of instigating, aiding and abetting others in producing infringing combinations, particularly where petitioner manufactures and sells the patented combinations and uses its patents merely for the purpose of protecting rights to sell the patented combinations.

POINT V: The doctrine of expendable or perishable elements of a patented combination does not justify respondent's manufacture, stocking and sale of the chasers to users of the patented thread cutting combinations to enable users to assemble the patented combinations without license for the first time with heads purchased from the petitioner for non-infringing uses.

V.

Argument.

POINT I: The doctrine of expendable or perishable el ments, which the Court of Appeals principally relies upo as the basis of its reasoning in this case, is set out in thi Honorable Court's opinion in *Wilson* v. *Simpson*, 9 How 109, 13 L. Ed. 66, and is exemplified by the decisions cite by the Court of Appeals, namely, *Gillette Safety Razor C* v. *Standard Safety Razor Co.*, 64 Fed. (2d) 6 (C. C. A. 2) *Gillette Safety Razor Co.* v. *Hawley*, 64 Fed. (2d) 1 (C. C. A. 2); *American Safety Razor Co.* v. *Frings Bros. Co* 52 Fed. (2d) 416 (C. C. A. 3). In all of these cases, th expendable element was an element of slight expense capa ble of effective use once, or for a relatively short time only and the patented combination was sold under condition which led the purchaser to understand that he had th implied right, if he so chose, to replace the element t obtain a fair return for his investment in the complete com bination. Furthermore, in all of these cases, the portio of the combination remaining after the expendable elemen became worn was incapable of any practical use, unless replacement element could be secured.

In the present case the chasers have a relatively long an reasonable life in the patented combination, and the head in which they are used are sold with plain notice that the are sold for purposes other than use in the patented threa cutting combinations, while petitioner's chasers are sol with license to use them for their life in the patented threa cutting combinations. The Court of Appeals stated tha the petitioner's chasers sold for about $9.00 a set and th die heads from $90.00 to $350.00 (R. 4256). It failed however, to note that the heads in suit can be and are use for purposes other than threading (F. 59, R. 4155), tha

the competitive radial chasers sold in competition with petitioner's chasers cost only $3.00 a set (F. 24, R. 4150), that these radial chasers, like the expendable elements of the cases relied upon by the Court of Appeals, are capable of proper use once or as a practical matter only a very few times (F. 70, R. 4157), whereas petitioner's chasers here in suit can be reground forty to two hundred times (F. 71, R. 4157) and can be reset to their proper position after each regrinding (F. 70, R. 4157). As a matter of fact, a single set of the chasers here in suit has approximately twenty times the life of a set of radial chasers (R. 819, 1358, 1476, 1477, 1484) and will produce two hundred thousand (200,000) to one million (1,000,000) steel bolts (F. 69, 71, R. 4157), at a cost of from a little over .0003 of a cent to about .001 of a cent per bolt, using the maximum cost figures cited by the Court of Appeals in its opinion and the minimum number of bolts. It clearly follows that a purchaser of petitioner's patented thread cutting combinations under petitioner's notice buys the heads for other purposes only and obtains his full money's worth at the end of the life of a single set of chasers. It follows further that petitioner's chasers are not, in any sense, the equivalent of the short lived, inexpensive expendable cutters of the decisions relied upon by the Court of Appeals. It, accordingly, is submitted that the Court erred in so holding in disregard of petitioner's patent notices and limited licenses, subject to which all purchases are made from petitioner and which are authorized by the decisions of this Honorable Court, namely, *Strauss et al.* v. *Victor Talking Machine Co.*, 243 U. S. 490, 61 L. Ed. 866, 37 S. Ct. 412; *Ethyl Gasoline Corp.* v. *United States*, 309 U. S. 436, 84 L. Ed. 852, 60 S. Ct. 631; *United Shoe Machinery Corp.* v. *United States*, 258 U. S. 451, 66 L. Ed. 708, 42 S. Ct. 363; and the cases of *General Electric* v. *Continental Lamp*

Works, 280 Fed. 846 (C. C. A. 2); *The Skee Ball Co.* v. *Cohen*, 286 Fed. 275 (D. C. E. D. N. Y.); and *Radio Corp. of America et al.* v. *Andreas*, 15 Fed. S. 685 (D. C. E. D. N. Y.).

We submit the Court of Appeals erred in refusing to properly apply the law as decided by this Honorable Court in the cases of *Wilson* v. *Simpson*, 9 How. 109, 13 L. Ed. 66 and *Leeds & Catlin Co.* v. *Victor Talking Machine Co.* (*No. 2*), 213 U. S. 325, 53 L. Ed. 816, 29 S. Ct. 503, because of failure to recognize the nature of the chasers involved, and the clear lack of implied right of purchasers to replace worn out chasers after having obtained the benefits of long and reasonable life of the chasers purchased from petitioner, or to assemble different combinations from those originally purchased by purchasing chasers to cut different threads than those originally licensed by petitioner.

Point II: The Court of Appeals ruling as to misuse of patents is based on petitioner's patent and license notices (F. 292 and 295 to 297, R. p. 4192 to 4196). The patent notices of Findings 292, 295, 297 are applied to chaser boxes, petitioner's invoices and tags tied to petitioner's die heads and holders, which are patented apart from the combination claims here in suit and are used for many operations other than thread cutting (F. 59 to 61, R. 4155, 4156). The license notice of Finding 296 is applied to petitioner's chaser boxes and constitutes an unlimited license to use these chasers in heads sold by petitioner or anyone else to produce the thread cutting combinations covered by the patents in suit for the life of the chaser only. Clearly, the patent notices merely advise the public of petitioner's patent rights and are proper under this Honorable Court's decision in *Ethyl Gasoline Corp.* v. *United States*, 309 U. S. 436, 84 L. Ed. 852, 60 S. Ct. 631; *Strauss et al.* v. *Victor Talking Machine Co.*, 243 U. S. 490,

61 L. Ed. 866, 37 S. Ct. 412; *United Shoe Machinery Corp.* v. *United States*, 258 U. S. 451, 66 L. Ed. 708, 42 S. Ct. 363.

The license notice merely constitutes an unconditional license to use the chasers throughout their life in producing plaintiff's patented combinations and includes the right to purchase the heads and holders from others for use in the patented combinations with petitioner's chasers. It does not impose any condition whatsoever upon the purchaser as to the use of the chasers actually purchased by him nor require him to use these chasers in petitioner's heads and holders. It, accordingly, is respectfully submitted that this license is proper under the authority of this Honorable Court's decision in *Ethyl Gasoline Corp.* v. *United States*, 309 U. S. 436, 84 L. Ed. 852, 60 S. Ct. 631; *Strauss et al.* v. *Victor Talking Machine Co.*, 243 U. S. 490, 61 L. Ed. 866, 37 S. Ct. 412; *United Shoe Machinery Corp.* v. *United States*, 258 U. S. 451, 66 L. Ed. 708, 42 S. Ct. 363 and the cases of *General Electric* v. *Continental Lamp Works*, 280 Fed. 846 (C. C. A. 2); *The Skee Ball Co.* v. *Cohen*, 286 Fed. 275 (D. C. E. D. N. Y.); and *Radio Corp. of America et al.* v. *Andreas*, 15 Fed. S. 685 (D. C. E. D. N. Y.). As a matter of fact, these notices together merely advise the public of the specific rights which this Honorable Court has repeatedly recognized as existing in favor of owners of patents. *Leeds & Catlin Co.* v. *Victor Talking Machine Co.* (*No. 2*), 213 U. S. 325, 53 L. Ed. 816, 29 S. Ct. 503; *Strauss et al.* v. *Victor Talking Machine Co.*, 243 U. S. 490, 61 L. Ed. 866, 37 S. Ct. 412; and *Ethyl Gasoline Corp.* v. *United States*, 309 U. S. 436, 84 L. Ed. 852, 60 S. Ct. 631.

It, accordingly, is respectfully submitted that petitioner's patent and license notices do not extend or attempt to extend its patent rights in an inequitable or illegal manner and that, therefore, the wrong contemplated by the Honorable Court's decisions in *Carbice Corp.* v. *American Patents*

Corp., 283 U. S. 27, 75 L. Ed. 819, 51 S. Ct. 334; *Leitch Mfg. Co.* v. *Barber Co.*, 302 U. S. 458, 82 L. Ed. 371, 51 S. Ct. 288; *Morton Salt Co.* v. *G. S. Suppiger Co.*, 314 U. S. 488, 88 L. Ed. 363, 62 S. Ct. 402; and *Mercoid Corp.* v. *Mid-Continent Investment Co.*, 320 U. S. 661, 88 L. Ed. 262, 64 S. Ct. 268, is not present in these notices. It, accordingly, is submitted that this Honorable Court should exercise its supervisory authority to resolve the conflict between the decisions of the Court of Appeals and District Court in this case and its own decisions relied upon by petitioner.

POINT III: Petitioner's patent and license notices are fully supported by authority, including decisions of this Honorable Court, and as they merely delineate petitioner's patent rights under its duly granted patents as set forth in Point II hereof, it is respectfully submitted that the lower court's rulings that petitioner is guilty of a violation of the Clayton Act of October 15, 1914, c. 323, Sec. 3, 38 Stat. 73, U. S. C. Title 15, Sec. 14, is in conflict with the pronouncements of this Court and the subordinate Federal Courts regarding patent and license notices relied upon by petitioner, and are contrary to the Act itself, which requires an agreement collateral to the sale and imposing a condition, agreement or understanding that the purchaser shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the seller.

The particular section of the Clayton Act involved is Chapter 323, Sec. 3, of the Act of October 15, 1914, 38 Stat. 731, U. S. C. Title 15, Sec. 14, reading as follows:

> "Sale, etc., on agreement not to use goods of competitor.
>
> "It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or

make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

The Court of Appeals in this case definitely ruled in its opinion (R. 4258) that petitioner's notices did not contain express conditions, agreements or understandings violative of the Clayton Act but that practically and by inescapable implication an illegal condition was imposed. No authority was cited for this position in the Court's opinion and no authority, it is submitted, can be found to justify this ruling, since petitioner's patent notices and license notices are legally proper under the decisions referred to in Point II hereof. Nowhere in these notices is there any collateral condition, agreement, or understanding that the purchaser shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor nor any requirement that the purchaser must buy petitioner's chasers or petitioner's die heads or holders. In fact, the chaser license includes the right to use the holders of heads in combination therewith. As a consequence, it is respectfully submitted that the Circuit Court of Appeals decision is in conflict with the decisions of this Court and the subordinate Federal Courts which have approved petitioner's

patent and license notices, and this Honorable Court should exercise its supervisory authority to resolve this conflict and clarify the application of the Clayton Act in its relation to patent rights, to the end that the public, the courts and petitioner may be advised of the relative rights of patentees and the public regarding patent and license notices.

POINT IV: To the end that the Patent Office, the Courts, patentees in general, and the general public may be in a position to determine the rights of patentees in combination patents of the type involved in this suit, it is respectfully prayed that this Honorable Court follow the suggestion of the Court of Appeals in this case (R. 4251) and, by application of the law to the specific facts of this case, clarify the doctrine of contributory infringement under the case of *Leeds & Catlin Co.* v. *Victor Talking Machine Co. (No. 2)*, 213 U. S. 325, 53 L. Ed. 816, 29 S. Ct. 503, as modified by this Honorable Court's decision in *Mercoid Corp. v. Mid-Continent Investment Co.*, 320 U. S. 661, 88 L. Ed. 262, 64 S. Ct. 268, and the cases referred to therein. The Circuit Court of Appeals in this case, correctly we submit, points out the full sweep of the implications of the Mercoid doctrine is not clearly grasped and that the controlling authority of this Court's opinions specifically applying the doctrine in other cases to crystallize the Mercoid doctrine is necessary to safely guide the lower Courts in application of this doctrine. The present case, it is submitted, presents an ideal situation for clarification of this doctrine, since there is a complete absence of express contract conditions compelling the public or users of petitioner's patented structures to purchase the elements of petitioner's patented combinations from petitioner, a clear negativing of implied right to replace or substitute chasers by written notice to the purchasers, and a clear case of a patent owner attempt-

ing to rely on its patent rights alone in seeking protection from unlawful competition. Certainly, this Court's decision in the Mercoid case does not have the effect of overruling the basic principle that infringement is a tort or that one who wilfully, deliberately and knowingly aids and abets the commission of a tort by others is jointly and severally liable for the damages resulting from his own and confederates' tortious acts. Since the doctrine of torts is a basic principle of our common law and since the doctrine of contributory infringement is based on these unquestionably equitable principles, as shown by the decisions of this Honorable Court in the cases of *Leeds & Catlin* v. *Victor Talking Machine Co.*, 213 U. S. 325, 332, 333, 53 L. Ed. 816, 29 S. Ct. 503, and *Thomson-Houston Electric Co.* v. *Ohio Brass Co.*, 80 Fed. 712 (C. C. A. 6), it is respectfully submitted that this Court should at this time point out the limits of the doctrine of joint tort feasors, as applied to patent infringement, to the end that the Patent Office, Courts, patent owners, and the public may determine their relative rights as a practical matter for the infringement and granting of such combination patents.

Point V: The Circuit Court of Appeals ruled in its decision that respondent had the right to make and sell its chasers designed and suited practically only for use in the patented combinations, with the intention that they be used in the combinations patented to petitioner, because said chasers were held the expendable or perishable element of the combinations. It seemingly assumed that purchasers bought, and respondent sold, said chasers solely to revitalize worn-out combinations, or concluded that it was immaterial how respondent's chasers were used.

Yet it was conceded by respondent that its chasers were frequently used to construct *for the first time* the patented combinations. This occurred particularly where the pur-

chaser of a new Landis die-head assembled new Chaso chasers in said head. It occurred also when an unworn chaser was replaced by a new Chaso chaser to cut a different thread. The purchaser of the Landis head had no express or implied license to originally assemble any of the patented combinations by reason of the purchase of only the heads and holders, which were capable of non-infringing use, and any right it might have to renew a combination purchased from petitioner, by replacement of a chaser, was limited to replacement of a worn-out chaser with one identical with the original, so as to reform the original combination and not to substitute a different chaser to produce a distinctly different combination. A purchaser who originally uses Chaso chasers to construct one of petitioner's patented combinations or distinctly different replacement chasers to bring into being a specifically different combination is not protected by the expendable element doctrine, and is a direct infringer of petitioner's patents when he makes said assemblies. Respondent contributes to such infringement in supplying the chaser, the active or dominant element of the combination, under *Leeds & Catlin Co.* v. *Victor Talking Machine Co. (No. 2)*, 213 U. S. 325, 53 L. Ed. 816, 29 S. Ct. 503.

The clear implication from the ruling of the Circuit Court of Appeals is that an expendable or perishable element, whether active or dominant, can be lawfully made and sold because of the inherent nature of the element and regardless of whether the element is used to replace a like worn-out element in the same combination, and regardless of clear absence of any implied or express right to make replacements. This is a novel proposition of patent law and constitutes an implied change in the law of *Leeds & Catlin* v. *Victor Talking Machine Company,* that, we submit, should not become the prevailing law, without express

sanction of this Honorable Court, which decided that case.

For it is believed to be incontrovertibly true that heretofore the doctrine of perishable and expendable elements has been limited to replacement of like worn-out elements in used combinations on the theory that such replacement is implied in the condition of sale and constitutes lawful repair of the used combination.

Perhaps, the Court of Appeals really had this aspect of the instant case in mind when it said, with regard to the doctrine of contributory infringement:

> "May we, however, without impropriety, suggest a doubt whether, for practical purposes, much is left of that other doctrine, that a combination of old elements is inventive if it produces a new and useful result, for if one supplier may furnish an integral part specifically intended for use in the patented combination, with no other use apparent, without being guilty of infringement, other manufacturers may do likewise in respect to other parts. The result may be that only he is an infringer who furnishes all of the elements of the patented combination and integrates them into operating embodiment, and so in many cases, the only infringers, as the present case illustrates, are the ultimate consumers whom it would be fruitless to pursue in the enforcement of patent rights."

After making the quoted comment the Court proceeded, however, as if all that was involved in this case was the production and sale of elements, alleged by respondent to be expendable or perishable, for use in the repair of worn-out combinations.

Petitioner recognizes that *Mercoid Corp.* v. *Mid-Continent Investment Corp.*, 320 U. S. 661, 88 L. Ed. 262, 64 S. Ct. 268, may be said to countenance the ruling of the Court of Appeals if the *Mercoid* case completely overrules *Leeds & Catlin v. Victor Talking Machine Co.* Petitioner's case is,

however, sharply distinguished from the *Mercoid* cas in that Landis created, developed, makes and supplies th whole patented combinations to the public, and it uses it patents to protect its combinations, and not, as in th *Mercoid* case, to control the sale of elements for use i combinations that were not being supplied to the public b the owners of the combination patents.

The far-reaching and sweeping change in existing la reasonably to be implied from the ruling of the Circu Court of Appeals in this case and *Mercoid* v. *Mid-Contine* requires, we submit, that the law be settled by this Ho orable Court.

Conclusion.

It, therefore, is respectfully submitted that this case one calling for the exercise by this Court of its supervisor powers and that to such end a writ of certiorari should b granted and this Court should review and reverse the de cision of the Circuit Court of Appeals for the Sixth Circu and the decision of the United States District Court fo the Eastern District of Michigan, Southern Division.

Respectfully submitted,

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